

## OUTDOOR MARKETPLACE LEASE

This lease is made on August 1, 2005, between the 32nd District Agricultural Association, a state institution ("District"), and Tel Phil Enterprises, Inc., a California Corporation. ("Lessee"). The District leases to Lessee, and Lessee hires from the District, the premises described in this Lease Agreement.

### A. Premises

The premises to be utilized in this Outdoor Marketplace Lease ("Lease Agreement") consist of an approximate 22.3 acre space known as the Main Parking Lot A of the Orange County Fairgrounds ("fairgrounds"), and identified on Exhibit "A" attached to this Lease Agreement ("Premises").

The parties acknowledge that the District has adopted a 10-year master plan for the fairgrounds property and that within the term of this lease, elements of the master plan will be implemented. This may cause a need to relocate part of the outdoor marketplace to a space on the fairgrounds of similar size. Lessee acknowledges that relocation may occur and that the site for relocation is at the sole and exclusive discretion of the District. Any and all costs resulting from any relocation will be at the sole expense of Lessee.

### B. Term

The term of this lease is five (5) full business years, beginning August 1, 2005 (the "Rental Commencement Date"), unless sooner terminated as provided for in this lease.

The District, in its sole and exclusive discretion, may opt to extend the Term for an additional five (5) year period. This option may be exercised by giving the Lessee a written notice of extension on or before the 180th day prior to expiration of the original term. Any extension of this lease shall be subject to all the provisions of this Lease Agreement; provided, however, that the District's exercise of the option to extend the Lease Agreement may include or require renegotiation of all or part of the Lease Agreement, in the District's sole and exclusive discretion.

### C. Uses

The premises shall be used for the purpose of conducting an outdoor marketplace business and for no other purpose without prior written consent of the District. "Outdoor marketplace business" is defined as the sale of goods and/or services on the Premises. Goods and services sold shall not include more than 10% used items, excluding antiques and collectibles and are to be of a nature that is appropriate for a family atmosphere in a public place.

Any other use must be requested through the District's Event Services Office in written form 90 days prior to the desired use or event. The use will be approved by the District Board and

documented on a separate rental agreement. The terms and conditions of the rental agreement shall follow the approved policies and procedures of the District's events program.

**D. Dates and Hours of Operation**

Lessee shall keep the Premises open for business and in full operation on every Saturday and Sunday of each month from 7:00 a.m. to 4:00 p.m. with the following exceptions:

1. Four weekends for the annual Orange County Fair, with the dates to be determined in the District's sole and exclusive discretion
2. Inclement weather
3. Other dates mutually determined and agreed upon between the Lessor and Lessee, including, but not limited to, Easter Sunday.

Lessee may also conduct an outdoor marketplace on the Friday after Thanksgiving and for 5 weekdays in the seven-day period immediately preceding Christmas. Lessee agrees to notify the District by July 1, 2005, and thereafter, on or before January 1 of each calendar year of the proposed dates of operation for that calendar year, including Thanksgiving and Christmas holiday swap meets.

Lessee shall not use or occupy the Premises at any other times without the prior written consent of the District, which consent may be given or denied by the District at its sole discretion without limitation.

The District reserves the right to designate one additional weekend per year in which the outdoor marketplace will be either canceled, or reconfigured, to accommodate other activities on the fairgrounds. The District and Lessee will negotiate in good faith to arrive at a mutually acceptable weekend date for the reconfiguration or cancellation of the outdoor marketplace.

Marketplace hours may commence no earlier than 12:00 a.m. on the Saturday of an outdoor marketplace day and must end at 5:30 p.m. on the Sunday of an outdoor marketplace day. Marketplace hours, if any, on the Friday following Thanksgiving, and during the 5 weekdays in the week prior to Christmas shall be 12:00 a.m. on the first day of the holiday marketplace and end at 5:30 p.m. on the final day of the holiday marketplace.

Set up for the outdoor marketplace may not commence earlier than one (1) day prior to an operational day. Tear down must be completed by one (1) day following an operational day. Lessee acknowledges and agrees that the time permitted for set up and tear down may be restricted or limited because of other events taking place on the fairgrounds. Set up and tear down must be limited to the Premises.

Lessee shall ensure that all seller equipment is removed from the Premises at the conclusion of each operating weekend.

The foregoing dates and times of operation and other restrictions may be changed, modified, altered, or canceled only with the prior written consent of the District.

**E. Security Deposit**

1. Deposit. Lessee has deposited with Lessor the sum of \$25,000.00, receipt of which is hereby acknowledged by Lessor, as security for the full and faithful performance by Lessee of the terms, conditions, and covenants of this lease.
2. Deduction for Rent. If at any time during the term of this lease Lessee defaults in the payment of rent, or any portion of rent, under this lease, Lessor shall [or may] appropriate and apply any portion of the security deposit reasonably necessary to remedy any such default in the payment of rent.
3. Deduction for Repairs. If at any time during the term of this lease Lessee, Lessee's subcontractors, independent contractor's, vendors, agents, or employees damage the premises through want of ordinary care or any greater degree of culpability, then Lessor shall appropriate and apply any portion of the security deposit reasonably necessary to fund the necessary repair.
4. Deduction at Termination of Lease. If on termination of this tenancy Lessee fails to leave the premises in a condition comparable to the condition of the premises at the time Lessor delivered possession to Lessee at the commencement of this lease, ordinary wear and tear excepted, then Lessor shall be entitled to appropriate and apply all or any portion of the security deposit reasonably necessary to put the premises in the condition comparable to the condition of the premises at the time of delivery.
5. Replenishment and Increase of Deposit. If all or any portion of Lessee's security deposit is properly applied by the Lessor during the term of this Outdoor Marketplace Lease Agreement for any purpose authorized by this Outdoor Marketplace Lease Agreement, Lessor will provide Lessee with written notification, and this written notification shall include an itemized statement describing the disposition of the security. Upon receipt of written notification, Lessee shall have ten business days to replenish this amount. Lessee's failure to replenish the security deposit within ten business days from receipt of written notification shall constitute a material breach of this Outdoor Marketplace Lease Agreement.
6. Return of Deposit at Termination of Lease. Lessor shall return to Lessee the portion of the security deposit remaining after any deductions authorized by this Outdoor Marketplace Lease Agreement or otherwise authorized by law, if any, in the following manner. If a deduction has been made only for the nonpayment of rent, the remaining portion, if any, shall be returned not later than two weeks after the date Lessor receives possession of the premises. If a deduction has been made for any other reason authorized by this Outdoor Marketplace Lease Agreement or otherwise authorized by law, the remaining portion, if any, shall be returned not later than 30 days from the date Lessor receives possession of the premises. Lessee shall not be entitled to any interest on any portion of the security deposit.

F. Rent

1. Percentage Rent. The Percentage Rent payable under this Lease Agreement shall be 35% per cent of all Gross Revenues per applicable Lease Year. (The percentage rent specified and accepted in Lessee's bid proposal submitted in response to RFP No. SM-06-04.) "Gross Revenues" is defined as any and all revenue generated by the outdoor marketplace operation to include but not limited to all admission fees, space rental charges, food and beverage sales, miscellaneous income and sales, sponsorship and/or advertising fees collected by the Lessee.
2. Minimum Guaranteed Rent. The Minimum Guaranteed Rent for each Lease Year is \$3,500,000, payable in equal installments on the first day of each and every month. If the Percentage Rent provided for in paragraph (E) 1 above in any Lease year is less than the Minimum Guaranteed Rent, Lessee shall pay the difference between the Minimum Guaranteed Rent and the Percentage Rent.
3. Force Majeure. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, judicial orders, enemy or hostile government action, civil commotion, fire or other casualty or other causes (except financial) beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused, except for Lessee's payment of the Minimum Guaranteed Rent, as follows: If 50% or more of the Premises are unavailable for Lessee's use for a reason set forth in this paragraph, then Lessee shall be required to pay 50% of the Minimum Guaranteed Rent for a period equal to the period of such cause for failure to perform. If less than 50% of the Premises are unavailable for Lessee's use for a reason set forth in this paragraph, then Lessee shall be required to pay that percentage of the minimum Guaranteed Rent that is equal to the percentage of the Premises available for Lessee's use for a period equal to the period of such cause for failure to perform. However, in all events, if Lessee is unable to perform for any cause beyond its reasonable control (except financial) for a period in excess of forty-five days, then either party may terminate this Outdoor Marketplace Lease upon thirty days' written notice to the other party without further liability.
4. Payment. Percentage Rent of Gross Revenues shall be calculated on a daily basis for each weekend of outdoor marketplace operation. Lessee shall submit written statements, called "Operating Reports," to the District, detailing Gross Revenues for each day of operation. The Operating Report shall be submitted to the District on the Friday following the weekend of outdoor marketplace operation. Lessee shall pay to the District the percentage rent due from the weekend prior on the Friday following the weekend of outdoor marketplace operation. The Operating Report shall agree with the Financial Records. District reserves the right have an agent or employee of the District present each day of operation of the outdoor marketplace to audit daily Gross Revenues. All efforts will be made to not interfere with Lessee's operation.
5. Record Keeping. Lessee shall keep full and complete business and financial records of its operations in a form and substance satisfactory to the District. Lessee shall submit to

the District, in a form substantially similar to Exhibit "D", daily and monthly gross receipts reports including a listing all daily attendance figures (paid, discount, complimentary), all revenue listed by source including a breakdown of all individual seller fees for seller space; fees for all seller space acquired by bid; food and beverage sales reports; sponsorship and advertising revenue; admission revenue and any other financial information reasonably requested by the District.

6. Audits. An annual audit of Financial Records shall be conducted by an independent audit firm selected by the District. The District and the Lessee shall each pay for one-half of the cost of this annual audit. The Lessee shall make all Financial Records available for inspection or audit within fourteen days following notification by the District that the annual audit will be conducted. If the annual audit determines that Gross Sales are 2% or more in excess of the Gross Sales reported by the Lessee for the period in question, the Lessee shall promptly pay to the District all costs of the audit paid or incurred by the District for that audit.

District has the right to conduct additional audits of Lessee's Financial Records at any other time at the sole discretion of the District ("additional audit"). If District conducts an additional audit, Lessee shall make all Financial Records available for inspection or audit within fourteen days following any request by District that the Financial Records be made available for an additional audit. The District shall pay the costs of all additional audits; provided, however, that if the additional audit determines that an amount in excess of \$5,000.00 is due and owing from Lessee to the District, Lessee shall pay all costs associated with the additional audit within fourteen days after written demand by the District.

Lessee shall pay all amounts determined to be due and owing within five business days after notification by District of the amount due and owing. If any audit finds an amount in excess of \$5,000.00 is due and owing from Lessee to the District, Lessee shall pay the full amount, plus a penalty of 10% of the balance due and owing, no less than five business days after notification of the amount due and owing. If Lessee fails to pay any amount required to be paid by this paragraph, then District shall have the irrevocable right to take payment from the Security Deposit described in Paragraph Number E(6) above, and Lessee shall replenish that amount within five business days of notification that the Security Deposit requires replenishment.

Lessee shall maintain all Financial Records for at least five (5) years after the final payment of Rental under this Lease Agreement and extension of this Lease Agreement, or longer as directed by the District.

Any information obtained by the District pursuant to any inspection or audit shall be considered a public document, unless otherwise exempt, and subject to disclosure according to the Public Records Act.

7. Best Efforts. Lessee is required to, and will, use its best efforts in the operation of the outdoor marketplace to maximize Lessee's Gross Revenues.

**G. Operation and Management of Marketplace**

Operation, management and maintenance of the outdoor marketplace will be at Lessee's sole expense, including, but not limited to:

1. Coordinating reservations and renting spaces for sellers;
2. Establishment and collection of admission fees and all other revenue;
3. Advertising, marketing, and promotion, which shall be in compliance with all applicable statutes, regulations and ordinances, and subject to the prior written approval of the District, which will not be unreasonably withheld;
4. Staffing with all necessary personnel including supervisory personnel;
5. Providing management, administrative and security personnel and controls at any time outdoor marketplace vendors are on the premises
6. Providing food and beverage service and operate from food service facilities that are clean and sanitary in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes and requirements of duly authorized health authority of the County of Orange and any other health department having jurisdiction.
7. Compliance with all requirements of the Department of Alcoholic Beverage Control.
8. Engaging and supervising exterminators at Lessee's expense to control vermin and pests as is necessary, but in no event less than once each month. Lessee agrees extermination services must be provided in all areas where food is stored, prepared, served, sold, or dispensed.
9. Keeping and providing all financial records required by the District.
10. Filing and implementing an annual operating plan for an outdoor marketplace business which addresses seller space configuration, subject to approval by the District.
11. Complying with all District policies including those outlined in the Event Services Handbook, which are filed in the District offices
12. Maintaining the Premises in a good, clean, and safe condition. Lessee shall prepare and submit to the District for the District's approval a plan for maintenance of the Premises, facility cleanup, waste removal, waste recycling, and trash.
13. Develop and submit to the District for the District's approval a parking plan for outdoor marketplace visitors, sellers and employees.
14. Provide appropriate levels of security and crowd control measures for the operation
15. Provide a system for emergency medical response during hours of operation
16. Compliance with SB198 health and safety requirements
17. Compliance with all federal, state and local statutes, laws, ordinances and regulations relating to environmental issues; including, but not limited to South Coast Air Quality Management District regulations, Regional Water Quality Control Board regulations. Lessee shall at all times conduct its business in compliance with the Clean Air Act, the Clean Water Act, the Porter-Cologne Water Quality Act, the California Environmental Quality Act, the National Environmental Protection Act, and all comparable, related, and successor statutes, laws, ordinances, and regulations.
18. Develop and submit to the District for the District's a program to maintain a drug-free workplace at the outdoor marketplace.

19. Effective January 1, 2008, Lessee covenants that it will fully comply with Public Contract Code section 10295.3 with regard to benefits for domestic partners. For any contracts executed or amended, bid packages advertised or made available, or sealed bids received on or after July 1, 2004 and prior to January 1, 2004, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with Public Contract Code section 10295.3
20. Compliance with all federal, state, and local statutes, laws, ordinances and regulations relating to equal employment, disability access, and non-discrimination, including, but not limited to, the Unruh Act, Americans with Disabilities Act, Occupational Safety and Health Act, California Civil Code sections 51 through 54.6, inclusive, and all comparable, related, and successor statutes, laws, ordinances, and regulations.

Lessee further agrees to use reasonable care in its use and occupancy of the Premises and, at all times during the Term, to keep and maintain the Premises in good, clean and safe condition and to prevent waste upon, or damage to, the Premises. Lessee will maintain all of its equipment, inventories and other tangible property in a well maintained, neat, orderly and careful manner at all times. All storage will be in an area designated by the District. Storage is restricted to those items used in general operation of the outdoor marketplace. Storage of personal items is prohibited.

Maintenance, including equipment and facilities repairs, must be confined to the Premises, and may not occur on any other part of the fairgrounds. Lessee acknowledges and agrees that maintenance may be limited due to other events occurring on the fairgrounds.

#### **H. Limitations on Use**

Lessee will not conduct, or permit to be conducted on the Premises any business or act, which is or may be contrary to, or in violation of, any federal, state, or local statute, law, regulation, or ordinance. Lessee shall not engage in or knowingly or negligently permit any condition upon the Premises inappropriate to the neighborhood in which the fairgrounds is located, which includes governmental buildings, educational institutions and residential neighborhoods.

#### **I. Right to Enter**

The District reserves the right to enter onto the Premises at any time for any purpose, including emergencies. Lessee shall permit designated agents of the District to make periodic inspections of the Premises to determine whether of the Lessee has complied with, and is complying with, the terms and conditions of the Lease Agreement. Lessee shall also permit designated agents of the District to enter the Premises for the purpose of accomplishing repairs or replacements where the Lessee is obligated to make such repairs or replacements and has failed to do so after a reasonable notice period determined by the District. The notice period shall depend upon the nature and extent of repair or replacement required and the impact of the defect on the safety and profitability of the outdoor marketplace. No such entry by, or on behalf of, the District on the Premises shall cause or constitute a termination of the Lease Agreement or be deemed to constitute an interference with the possession of the Premises by Lessee.

Lessee shall be responsible for any costs for repairs made to Premises or facilities by District staff or any other contracted service. Lessee shall be responsible for rental of any equipment needed to make repairs, including District equipment.

**J. Licenses, Permits and Taxes**

Lessee shall obtain, maintain and pay for all licenses and permits required for its business throughout the entire term of the Lease Agreement, and any extensions, including, but not limited to, holdover periods, if any.

Lessee is aware and agrees that the Lease Agreement, or Lessee's use of the Premises, may be subject to federal, state or local charges, taxes or fees. All personal property taxes, income taxes, possessory interest taxes, general and special assessments, and other charges of every description levied on or assessed against the operation of the outdoor marketplace, shall be paid promptly by Lessee direct to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for nonpayment. Lessee shall hold the District harmless and indemnify the District against and from any and all charges, fees, assessments and taxes imposed under this Paragraph.

**K. Consent to Improvement or Modification of the Premises**

During the term of this Lease and all extensions, Lessee shall make no improvement or modification of the Premises for any reason without the prior written consent of the District. The District may grant or withhold its consent for any improvement or modification of the Premises in its sole and exclusive discretion. No improvement or modification made by Lessee during the term of this Lease may be subsequently modified, altered, or removed without the prior written consent of the District. Any improvement, alteration, or modification of the Premises made by Lessee shall be at the sole cost and expense of the Lessee. All improvements, alterations, or modifications made by the Lessee shall be in strict compliance with any and all conditions specified by the District, and with all codes, statutes, ordinances and regulations by any governmental agency having jurisdiction. Lessee shall defend and indemnify the District against all liability and loss of any type, including but not limited to, all expenses, liens, mechanics liens, claims, charges or damages to property or any other person, arising out of work performed on the premises by lessee, together with reasonable attorneys fees and all costs and expenses which might arise by reason of the making of repairs, improvements or modifications; excepting only the sole negligence or willful misconduct of the District.

**L. Title to Improvements**

During the term of this Lease and all extensions and as long as Lessee is operating on the Fairgrounds, Lessee shall be entitled to use and occupy the works of improvement constructed by Lessee on the Premises on or before November 8, 2004, which are the property of Lessee. At the conclusion of the term of this Lease, and all extensions and when Lessee is no longer operating on the Fairgrounds, Lessee may, at its sole cost and expense, remove from the Premises all works of improvement constructed by Lessee on the Premises on or before



November 8, 2004. In the event Lessee elects to remove these works of improvement from the Premises, Lessee shall, at its sole cost and expense, return the Premises to their pre-construction condition, ordinary wear and tear excepted. If Lessee does not elect to remove these works of improvement from the Premises at the conclusion of the term of this Lease, and all extensions and is no longer operating on the Fairgrounds, title to these works of improvement shall transfer to the District, and the District shall not have to pay Lessee for these works of improvement. In the event title to these works of improvement transfers to the District, the Lessee will execute any and all documents that may be required to transfer title.

At the sole and exclusive discretion and option of the District:

1. All improvements constructed by Lessee on the Premises during the term of this Lease and all extensions shall, at the expiration of the term or sooner termination of this lease shall, without compensation to the Lessee, then become the District's property free and clear of all claims to or against them by Lessee or any third person, and Lessee shall defend and indemnify the District against all liability and loss arising from such claims or from District's exercise of the rights conferred by this Paragraph (K)(1); or
2. At the expiration or sooner termination of the term, the District may, at the District's election, demand the removal from the Premises of all fixtures and improvements or of certain fixtures or improvements or both, at Lessee's sole cost and expense. Removal of fixtures and improvements requires that Lessee restore the Premises to their condition at the initiation of the Lease term, ordinary wear and tear excepted.

**M. Food and Beverage Service**

Lessee will provide food and beverage service within the operation of the outdoor marketplace. Food and beverage are to be prepared and served from concession stands that are approved by the County of Orange Health Department. Lessee shall provide a food and beverage plan within the annual operating plan, indicating the number of concession stands, menus, pricing and location. Permanent food service facilities, if desired by the Lessee, must be submitted to the District Board of Directors for approval and subsequent agreement.

The Lessee must secure and comply with all requirements from the Department of Alcoholic Beverage Control. The Lessee shall prepare and submit to the District for the District's approval a comprehensive Alcohol Awareness Server Program; detailing plans, signs, policies and actions.

Lessee shall maintain all food service facilities in a clean and sanitary condition in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes and requirements of duly authorized health authority of the County of Orange and any other health department having jurisdiction.

**N. Assignment and Subletting**

The rights and privileges granted hereunder shall not be assigned or transferred in any manner whatsoever by the Lessee without the prior written approval of the District. For the purpose of

this paragraph, an assignment or transfer includes the sale of all, or a majority of all the legal and/or equitable interest in Lessee. In the event of a sale or transfer of ownership that is approved by the District, the District reserves the right to negotiate all terms and conditions relevant to the Agreement, including termination of the Agreement.

The Lessee shall not sublet any rights or privileges granted hereunder without the prior written approval of the District. In the event of a sublet that is approved by the District, the District shall receive the percentage rent designated in the Lease of Gross Revenues based upon the gross revenue from the operation of the sublease.

#### **O. Insurance**

1. Worker's Compensation. The Lessee shall secure and maintain, at its own expense, during the Term all Worker's Compensation insurance required by California law for all of Lessee's employees and shall require the same coverage for any subsidiaries, agents, if any, and its employees, and shall carry a minimum of five million dollars (\$5,000,000) employers insurance coverage as part of the Worker's compensation insurance.
2. Automobile Insurance. Lessee shall secure and maintain at its own expense during the Term Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (any auto) with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Lessee's vehicles (autos, trucks, or other licensed vehicles) on the Premises or any portion of the fairgrounds.
3. Commercial General Liability Insurance. The Lessee shall secure and maintain at its own expense during the Term a minimum of five million dollars (\$5,000,000) combined single-limit commercial general liability insurance covering the Lessee, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage, personal injury, liquor liability, automobile and maintenance vehicle liability insurance.

Coverage shall include blanket contractual insurance and such coverage shall make express reference to the Lessee's hold-harmless provision in Section M below. The liability insurance shall include coverage for products, including liquor liability.

The Lessee agrees that the general liability insurance herein provided for shall be in effect at all times during the Term. In the event said insurance coverage expires at any time or times prior to or during the Term, Lessee agrees to provide the District at least consistent with the provision of Paragraphs (N)(1) and (N)(2) of this Lease Agreement, prior to any expiration date, a new certificate of insurance evidencing insurance coverage as provided for in this Lease Agreement for a term not less than the remainder of the Term, or for a period of not less than one (1) year. New certificates of insurance and additional insured endorsements are subject to the approval of the District, the State of California, and California Fair Services Authority, and Lessee agrees that no work or services shall be performed, and no outdoor marketplace shall be conducted, prior the giving of such approval. In the event the Lessee fails to keep in effect at all times

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insurance coverage as herein provided, the District may, in addition to any other remedies it may have, terminate this Lease Agreement.

The following statement regarding additional insured must be included on all insurance certificates: "That the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and State Fair, their agents, directors, officers, servants, and employees are made additional insured but only insofar as the operations under this contract are concerned."

In addition to the foregoing, Contractor shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2010, 2012, 2024, showing the State of California, the 32nd District Agricultural Association, the Orange County Fair and Exposition Center, and their agents, directors, officers, servants, and employees are made additional insureds on Lessee's general liability insurance policy and automobile liability policy.

4. Provisions relating to all insurance required by Paragraph N. The insurance coverage provided by Lessee shall be primary and any separate coverage or protection available to the District or any other additional insured shall be secondary.

Nothing in this Paragraph N shall be construed as limiting in any way the extent to which the Lessee may be held responsible for damages resulting from Lessee's operations, acts, omissions, and/or negligence. Insurance coverage obtained in compliance with this Paragraph N shall not relieve the Lessee of liability in excess of such minimum coverage, nor shall it preclude the District from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to Lessee's indemnity obligations.

Upon request by the District, the Lessee shall immediately furnish a complete copy of any policy required by this Paragraph, including all endorsements, certified by the insurance company issuing the policy to be a true and correct copy of the original policy.

#### **P. Indemnity**

To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the District and its agents, directors, and employees from and against all claims, damages, losses, and expenses, of every kind, nature and description (including, but not limited to, attorneys fees, expert fees, and costs of suit), directly, or indirectly, arising from, or in any way related to the performance or nonperformance of this Rental Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act, and/or any state, local, successor, or comparable provision of law) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the District. Provided, however, that in no event shall Lessee be obligated to defend or indemnify the District with respect to the sole negligence or willful

misconduct of the District, its employees, or agents (excluding the Lessee herein, or any of its employees or agents.)

**Q. Notice**

Lessee shall, within three (3) business days, report in writing to the District any incident that might reasonably be expected to result in any claim under any of the indemnity or insurance provision of this Agreement. The Lessee also agrees to provide the District with information as to the disposition of any claims within thirty (30) days following said disposition.

**R. Surrender of Premises and Holding Over**

1. Surrender of Premises during the Annual Fair. Lessee agrees that following the final outdoor marketplace operation day prior to the Annual Fair to surrender possession of the Premises in good condition, reasonable wear and tear excepted, and District shall have the unconditional right to possession of the Premises. Lessee agrees to remove all equipment and temporary facilities from the Premises at the Lessee's sole expense. Storage of the equipment and temporary facilities shall not be on the fairgrounds but at an undetermined off-site location secured at the Lessee's sole expense.
2. Surrender of Premises. District shall not be required to give notice to quit possession at the expiration of the Term. Lessee covenants and agrees that on expiration of the Term, or on an earlier termination as hereinafter provided, it will peacefully surrender possession of the Premises in good condition, reasonable wear and tear excepted, and District shall have the unconditional right to possession of the Premises.
3. Holding Over. In the event that the Lessee should hold over and remain in possession of the Premises after the expiration of the Term, or sooner termination, such holding over shall be deemed not to operate as a renewal or extension of the Term and such hold over may be terminated by the District. If Lessee, with District's consent, which may be given or denied by the District in its sole and exclusive discretion without limitation, remains in possession after expiration of the term, such holding over shall be deemed to be a month-to-month tenancy on the terms and conditions set forth in this Lease Agreement; provided, however, that such month-to-month tenancy may be terminated at any time on thirty (30) days prior written notice to the other party.

**S. Default and Termination of Agreement**

1. Notification of Default. In the event Lessee shall default in the performance of the terms or conditions of this Lease Agreement, the District may notify the Lessee of such default in writing. Written notice referred to in this Section shall be as set forth in Paragraph T (14) below. Failure on the part of the District to notify Lessee of default in accordance with this Section shall not be deemed a waiver by the District of District's rights on default of the Lessee or such default at a subsequent time and such notice will have the same effect as if promptly made.

2. Correction of Default. Within five (5) days of receipt of written notice of default from the District, Lessee shall correct such default if the default is with respect to any payment required to be made by the Lessee or within ten (10) days of receipt of the written notice of default if it is of any other nature. In the event Lessee fails to correct the default to the satisfaction of the District within the time specified, or such greater period as the District may consent to by prior writing, the District shall have all rights accorded by law, including the rights granted under Section E of this Agreement, or to terminate this Agreement. The Lessee shall pay all costs and attorney's fees incurred by the District in the enforcement of any of the provisions in this Paragraph or in this Lease Agreement.
3. Labor Dispute. In the event the Lessee cannot perform its obligations under this Agreement because of a labor dispute, such nonperformance will not be considered a default; provided, however, that in the event Lessee cannot perform said obligations because of a labor dispute, the District may provide for the continuation of an outdoor marketplace, similar in operation to the outdoor marketplace, until the labor dispute is settled. In the event the Lessee cannot perform said obligations for more than sixty (60) business days because of a labor dispute, the District shall have the option to terminate this Agreement upon thirty (30) days notice.
4. Insolvency of Lessee. In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Lessee bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Lessee under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Lessee's affairs; or (d) appointing a receiver or a liquidator or a trustee in bankruptcy or insolvency proceedings against it, or shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon this Lease Agreement, then the District may terminate this Lease Agreement. In the event of such termination, the Lessee shall be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.
5. Acceptance of Rental. The acceptance of rental shall not constitute a waiver or estoppels of the District's right to exercise its remedies for the breach of any of the terms or conditions of this Lease Agreement.
6. Termination Upon Notice. Notwithstanding Paragraph A, herein, District reserves the right to terminate this Lease Agreement for any reason whatsoever upon three hundred sixty-five (365) days written notice.
- T. Destruction of Premises / Condemnation
  1. Destruction. If all or any portion of the leased premises, is damaged or destroyed by any cause whatsoever [or by any cause for which Lessee is required under this lease to carry insurance], Lessee shall at its own cost and expense promptly repair the damage and restore the leased premises to at least the same condition that existed before that damage

or destruction, regardless of whether any insurance proceeds paid for the damage or destruction are sufficient to cover the entire cost of repair or restoration. During repair and restoration this lease shall remain in full force and effect and the rent payable under this lease shall not be abated in any way or to any extent. The proceeds of any insurance purchased by Lessee covering the damage or destruction shall be made available to Lessee for the repair or restoration required under this section.

2. Condemnation. If all or any part of Premises is sold by the State of California, or is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this lease (1) Either District or Lessee may terminate this lease by giving the other ninety days' written notice of termination; provided, however, that Lessee cannot terminate this lease unless the portion of Premises sold by the State of California or taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this lease, and District is unable or unwilling to provide a substantially equivalent amount of space in lieu to the Premises sold or taken. Any and all damages and compensation awarded or paid because of a taking of the Premises shall belong to District, and Lessee shall have no claim against District or the entity exercising eminent domain power for the value of the unexpired term of this lease or any other right arising from this lease; provided, however, that Lessee shall be entitled to that portion of any and all damages and compensation specifically awarded or paid for the loss of goodwill of operating the outdoor marketplace on the premises.

U. General Conditions

1. Contract Documents. The Request for Bid Proposals (RFP) and the entire proposal submitted by the Lessee in response to RFP Number SM-06-04 are accepted by the District and incorporated into this Lease Agreement as contract documents. However, any conflict or discrepancy between the contract documents shall be resolved in accordance with the following order of precedence: (1) this Outdoor Marketplace Lease Agreement; (2) the RFP; and (3) the Lessee's submitted proposal.
2. Amendment or Modification of Agreement. No agreement to modify, or modification of, this Agreement shall be binding on the District unless the same is reduced to writing, approved by the Board of Directors of the District, and executed by the District and approved by the appropriate State agencies.
3. Advertising, On-site Signage & Sponsorship. All advertising shall be subject to the prior approval of District Staff, which approval will not be unreasonably withheld. Lessee shall not advertise in any manner or form on or about the Premises except by means of such signage or forms of mass media advertising approved by the District. Such approval must be in writing prior to display or mass media circulation. Advertising signage as well as operational signs are to be temporary in nature, placed only in the defined outdoor marketplace premises and must be removed and stored at the end of the outdoor marketplace operating weekend.

Lessee shall obtain the prior written approval of District Staff prior to entering into any sponsorship agreement. The District will not unreasonably withhold its approval.

4. Storage. At its sole discretion, the District shall provide the Lessee with a maximum of 3,000 square feet of indoor space and 6,000 square feet of outdoor space to be used exclusively for storing equipment pertaining only to the operation of the outdoor marketplace and no other purposes. Any additional space needed by the Lessee shall require written approval from the District. At its sole discretion, the District has the option to utilize the space allocated to the Lessee during its annual fair for operational purposes. The Lessee is solely responsible for any costs related to relocation of its storage to an off-site location.
5. Emergency/ Disaster Plan. Lessee shall be required to create an emergency disaster plan for the outdoor marketplace operation to be submitted for review and approval annually by the District. The emergency disaster plan requires the prior written approval of the District, and must be prepared in compliance with the District's emergency disaster plan, and in cooperation with District staff.

Lessee shall provide emergency medical response services during each operating day of the outdoor marketplace.

Lessee shall provide the District an "emergency key" in order to access all of Lessee's facilities in case of an emergency or disaster.

6. Fencing. Lessee agrees to install temporary fencing of the outdoor marketplace selling area for each day the outdoor marketplace is in operation, at its sole cost and expense. Prior to installation of any fencing, written plans for fencing must be provided to the District for its written approval. Temporary fencing shall be removed at the conclusion of an outdoor marketplace day and stored.
7. Parking. Lessee will manage all outdoor marketplace parking operations pursuant to a plan to be approved annually by the District, in writing. All parking operations must be maintained in strict compliance with the Americans with Disabilities Act, and/or any state, local, successor, or comparable provision of law.

Lessee acknowledges that the District is bound by a 1996 Settlement Agreement with the City of Costa Mesa outlining maximum fairgrounds parking and usage. Lessee acknowledges receipt of a copy of the 1996 Settlement Agreement, agrees to abide with the 1996 Settlement Agreement, without exception.

District reserves its exclusive right to implement a preferred parking area in the area designated as the Carnival Lot and Lot F and to charge parking fees. District has the rights to any and all revenue collected from this preferred parking operation.

8. Refuse and Waste Removal. All refuse and waste material created by the Lessee's operations in all areas of the Premises and fairgrounds, including surrounding fence lines

and streets, shall be promptly collected and disposed of after each outdoor marketplace day. Lessee shall be responsible for employing the necessary personnel, including supervisors, before, during and after hours of each operating day to comply with these provisions; providing sufficient waste receptacles and equipment at each location and making certain they are kept clean and properly serviced during and after each operating day, to the satisfaction of the District.

The District shall be responsible for the sweeping and cleaning of the outdoor marketplace debris in and around the outdoor marketplace sellers' area by 10:00 p.m. on each day of operation. All sweeping and cleaning expenses shall be the sole responsibility of the Lessee.

Wet refuse must be stored in water-tight containers pending removal from the Premises. Grease and waste foods shall be kept in closed metal containers until removed from the Premises.

All equipment utilized by the Lessee for refuse and waste removal shall only be staged in the outdoor marketplace premises or in a designated storage area. Equipment is to be staged only one day prior to the outdoor marketplace selling day and one day following the outdoor marketplace selling day.

9. Parking Lot Improvements. The District shall give the Lessee at least thirty (30) days notice prior to making any improvements to the Parking Lots such as paving, striping, electrical, sewer repair or installation. The District will make reasonable attempts to implement any construction, repairs or improvements without substantial negative impact to the outdoor marketplace operation.
10. Other Events. Lessee acknowledges that the District rents fairgrounds facilities and property outside of the Premises for the operation of other public and private events. Lessee agrees to cooperate with District staff and to make necessary adjustments in the operation of the outdoor marketplace to accommodate periods of increased or large event use on the fairgrounds.
11. Security and Law Enforcement. Lessee will develop and submit to the District, for its written approval, a security plan for the outdoor marketplace operation. All expenses for implementation and operation of the security plan shall be the sole responsibility of the Lessee. Any and all law enforcement costs incurred or in connection with the operation of the outdoor marketplace shall be the sole responsibility of the Lessee.
12. Prohibition of Liens. Lessee shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim for damages growing out of the work of construction, repair, restoration, replacement or improvement on the Premises or any other claim or demand howsoever the same may arise, but Lessee shall pay, cause to be paid, or bond against, all of said liens, claims or demands before any action is brought to enforce the same against the Premises; and Lessee shall indemnify and hold District and said Premises free and



harmless from all liability for any and all such liens, claims, and demands, together with all attorneys fees, costs, and expenses in connection therewith.

13. ATM Service. The District has the exclusive right to provide ATM services on the Premises and fairgrounds. The District will coordinate with the Lessee to determine the need for and placement of ATM's within the Premises. The District shall have exclusive right to any and all revenues earned for ATM service.
14. Notices. Any and all notices given under this Lease Agreement or otherwise may be served by enclosing the notice in a sealed envelope addressed to the other party as required by this Paragraph T (14), and sent by certified or registered mail with postage prepaid; or, by personal delivery. Notice shall be deemed given on the day of personal delivery, or five days after mailing. Notice shall be given as follows:

To the District:

32nd District Agricultural Association  
88 Fair Drive  
Costa Mesa, CA 92626  
Attn: Chief Executive Officer

With a copy to:

Deborah M. Fletcher  
Office of the Attorney General  
110 West A Street, 11th Floor  
San Diego, CA 92101

To the Lessee:

Tel Phil Enterprises, Inc.  
504 South Bay Front  
Newport Beach, CA 92662  
Attention: Jeffrey Teller

With a copy to:

Stewart R. Suchman  
Law Offices of Stewart R. Suchman  
5160 Campus Drive  
Newport Beach, CA 92660-2101

15. Successors. Each and all of the terms and conditions herein contained shall be binding upon and shall inure to the benefit of the successors in the interest of the District and, subject to the provisions as to assignment, any successors in interest of the Lessee.

16. Time is of the Essence. Time is of the essence in the performance of this Lease Agreement.
17. Independent Contractor. Lessee is not an employee or agent of the District by reason of this Lease Agreement or otherwise. Lessee is an independent contractor, and as between the District and the Lessee, the Lessee shall be solely responsible for its acts or omissions arising from, or relating to this Lease Agreement.
18. Applicable Law. This Lease Agreement shall be interpreted and enforced in accordance with the laws of the State of California and shall be deemed to have been made, and shall be performed, in the State of California.
19. Prohibition Against Similar Operation. During the Term, Lessee shall not own or operate any similar scale outdoor marketplace in a 25-mile radius from the District grounds.
20. Entire Agreement. Except as provided in Section T(1) above, this Lease Agreement, together with all Exhibits attached hereto, constitutes the entire Agreement between the parties. No promise, representation, warranty, or covenant not included in this lease has been or is relied on by either party.
21. Headings. The headings of this Lease Agreement are inserted only as a matter of convenience and reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provision hereof or the interpretation or construction thereof.
22. Acceptance of Standard Agreement Terms and Conditions. Lessee accepts and agrees to the Standard Agreement Terms and Conditions set forth in Exhibit B, which are incorporated by this reference.
23. Severability. If any covenant, term, condition or provision of this Lease Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.
24. Successors. Subject to the provisions of this lease regarding assignment and subletting, each and all of the covenants and conditions of this lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.
25. Attorneys Fees. If either party brings any action or proceeding arising out of, or in any way related to this Lease Agreement, or any right or remedy under this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees.

Dated: June 30, 2005

32nd District Agricultural Association

By:

Becky Bailey Findley  
Becky Bailey Findley  
Chief Executive Officer

Dated:

June 30, 2005

Tel Phil Enterprises, Inc.

By:

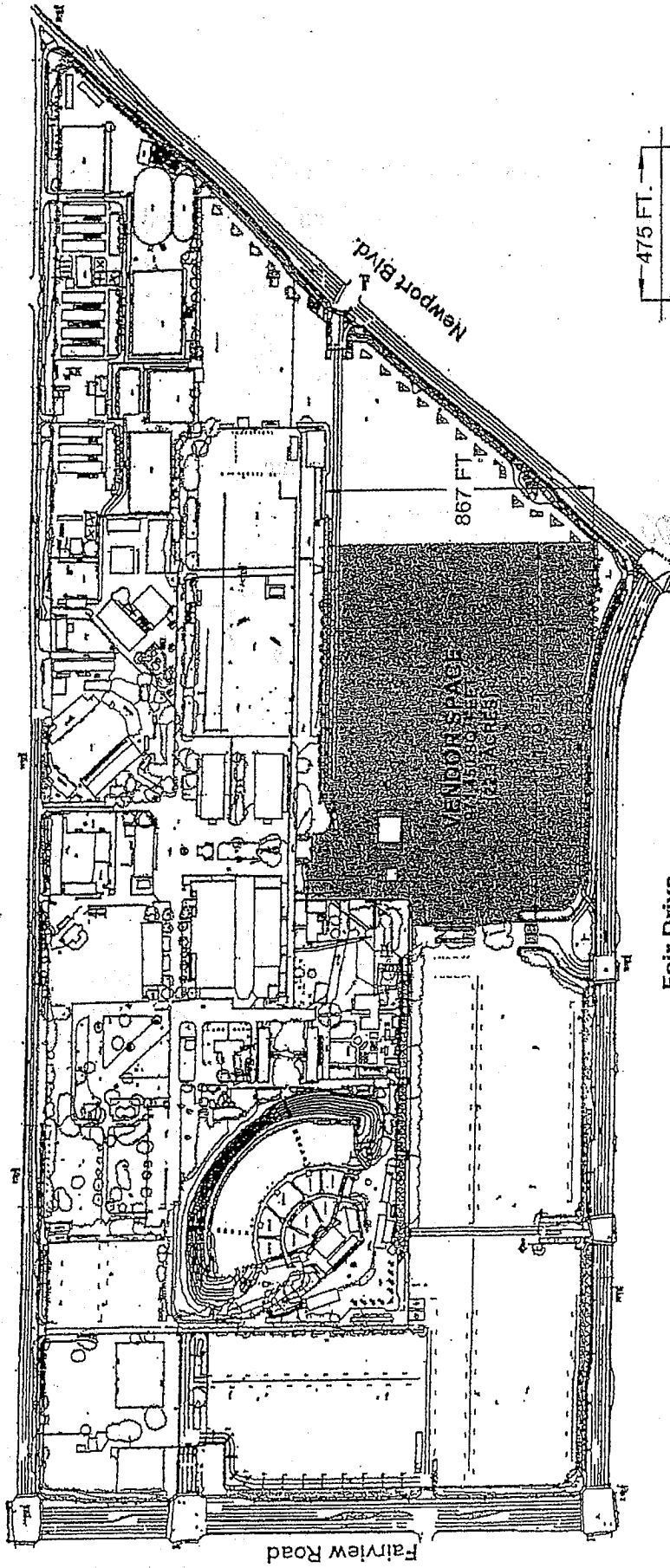
Jeffrey Teller  
Jeffrey Teller  
Chief Executive Officer

**APPROVED**

Sue Fick  
Department of Food and Agriculture  
Division of Fairs & Expositions

## Exhibit A

Arlington Drive



Fair Drive

# ORANGE COUNTY FAIR & EXPOSITION CENTER

88 Fair Drive, Costa Mesa, CA 92626 - 714-708-FAIR - [www.ocfair.com](http://www.ocfair.com)

## STANDARD CONTRACT TERMS AND CONDITIONS (F-31, RENTAL AGREEMENT)

1. National Labor Relations Board (PCC Section 10296)

Lessee, by signing this contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against Lessee within the immediately preceding two-year period because of the Lessee's failure to comply with an order of a Federal Court which orders the Lessee to comply with an order of National Labor Relations Board (Public Contract Code Section 10296).

2. Non-Discrimination Clause/Statement of Compliance (GC 12990/CCR 8103-8120)

During the performance of this contract, Lessee and its subLessees shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Lessees and subLessees shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Lessees and subLessees shall comply with the provision of the Fair Employment and Housing Act (Gov. Code Section 12900, et seq.) and the applicable regulations promulgated thereunder (CA Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code Section 12990 (a-f), set forth in Ch. 5 of Div. 4 of Title 2 of the CA Code of Regulations are incorporated into this contract by reference and made part hereof as if set forth in full. Lessee and its subLessees shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Lessee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

Lessee, by signing this contract hereby certifies, unless specifically exempted, compliance with Gov. Code Section 12990 (a-f) and CA Code of Regulations, Title 2, Div. 4, Ch. 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. Prospective Lessee agrees not to unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

3. Amendment (GC 11010.5)

Contract modification, when allowable, may be made by formal amendment only.

4. Assignment

This Agreement is not assignable by the Lessee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

5. Governing Law

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

6. Conflict of Interest (PCC 10410, 10411, 10420)

Lessee needs to be aware of the following provisions regarding current or former state employees. If Lessee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2) No officer or employee shall contract on his or her own behalf as an independent Lessee with any state agency to provide goods or services.

Former State Employees (PCC 10411):

1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Lessee violates any provisions of above paragraphs, such action by Lessee shall render this Agreement void. (PCC 10420).

7. Air or Water Pollution Violation (WC 13301)

Under the State laws, the Lessee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

**EXHIBIT "C" INTENTIONALLY OMITTED**

# Weekly Report for <dates>

Item	Price	Saturday		Sunday	
		Number	Amount	Number	Amount
Seller Summary:					
{Itemized by type of spaces and prices}					
Total					
Buyer Summary:					
{Itemized by type of tickets and prices}					
Complimentary Admissions					
Total					
Parking Summary:					
{Itemized by type of tickets and prices}					
Total					
Food and Beverage Summary:					
Food Sales					
Beverage Sales					
Beer/Wine Sales					
Other					
Total					
Attractions Summary:					
{Itemized by type of tickets and prices}					
Total					
Miscellaneous Summary:					
{Itemize all miscellaneous revenue sources or adjustments, including:					
Sponsorship Revenue					
Pay Phone Commissions					
ATM Machine Commissions					
Total					
Daily Totals					

EXHIBIT "D"





## AMENDMENT TO OUTDOOR MARKETPLACE LEASE

This Amendment to the August 1, 2005 Outdoor Marketplace Lease is made and entered into effective February 1, 2009, between the 32nd District Agricultural Association, a state institution ("District"), and Tel Phil Enterprises, Inc., a California Corporation ("Lessee").

District and Lessee agree as follows:

### Section I.

Pursuant to the provisions of Paragraph U(2) of the August 1, 2005 Outdoor Marketplace Lease the District and Lessee agree to modify the terms and conditions relating to rental payments, and agree to amend Paragraph F(2) of the August 1, 2005 Outdoor Marketplace Lease to read in full as follows:

F(2). Minimum Guaranteed Rent. The Minimum Guaranteed Rent for each Lease Year is \$3,500,000, payable on a weekly basis as follows:

(a). The Percentage Rent (as that term is defined in Paragraph F(1)) due the District for each operating weekend shall be paid to and received by the District on or before 5:00 p.m. each and every Friday following each weekend the Premises are open for business as provided in Paragraph D. If the Percentage Rent provided for in paragraph F(1) above in any Lease Year is less than the Minimum Guaranteed Rent, Lessee shall pay the difference between the Minimum Guaranteed Rent and the rent paid in the Lease Year in full on or before July 31 of each Lease Year.

### Section II.

Except as expressly amended above, the August 1, 2005 Outdoor Marketplace Lease remains in full force and effect.

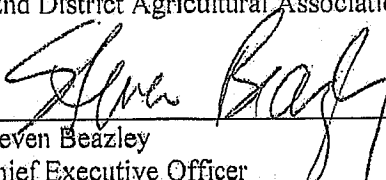


Dated:

32nd District Agricultural Association

Feb 6, 2009

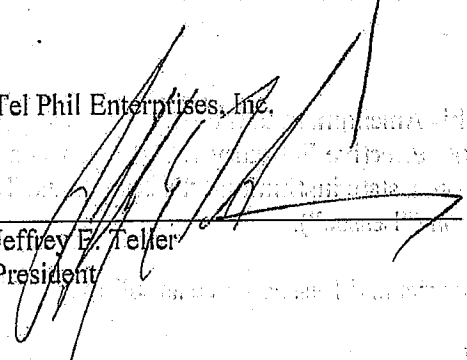
By:

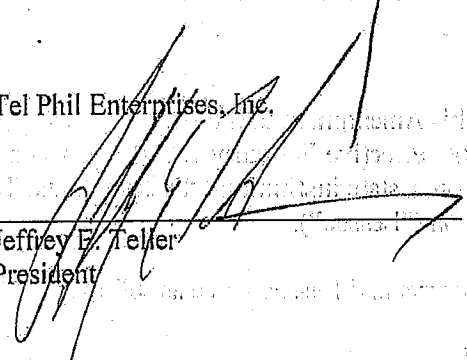
  
Steven Beazley  
Chief Executive Officer

Dated: FEBRUARY 3, 2009

Tel Phil Enterprises, Inc.

By:

  
Jeffrey E. Teller  
President



**S E C O N D   A M E N D M E N T  
T O  
O U T D O O R   M A R K E T P L A C E   L E A S E**

This Second Amendment to the August 1, 2005 Outdoor Marketplace Lease, as amended on February 1, 2009, ("Lease") is made and entered into effective April 1, 2009, between the 32nd District Agricultural Association, a state institution ("District"), and Tel Phil Enterprises, Inc., a California Corporation., doing business as the Orange County Market Place ("Lessee").

**RECITALS**

A. Current economic conditions have resulted in a decline in revenues generated by the Orange County Market Place.

B. The District desires to be able to use the Premises (as the term "Premises" is defined in the Lease) for an additional four weekends each year for the conduct of other events at the Orange County Fair & Event Center.

C. The parties to this Second Amendment intend this Second Amendment to establish conditions permitting Lessee to conduct the business of the Orange County Market Place in a manner permitting Lessee to adjust to the current economic conditions and to provide the District with the opportunity to utilize the Premises for additional event opportunities.

THEREFORE, in consideration of the above recitals, the agreements in this Second Amendment, and for other good and valuable consideration, the District and Lessee agree as follows:

**AGREEMENT**

1. **Term.** Pursuant to the provisions of Section B. of the Lease, the District hereby elects to exercise its option to extend the term of the Lease for a period of five (5) years, through and including July 31, 2015. Lessee agrees that this Second Amendment constitutes written notice of the District's exercise of its option to extend the term of the Lease in full compliance with the provisions of Section B of the Lease.

2. **Dates and Hours of Operation.** Section D. of the Lease is amended to add the following:

"The District will have the option to designate up to four (4) additional operating weekends per calendar year (in addition to the five weekend run of the OC Fair) for the District's exclusive use of the full property, including the Premises, for District events. The District will provide written notice to Lessee within 30 days of contracting an outside-promoted event, or approval of a self-produced event; and in all events the District will provide to Lessee at least six months' written notice in advance of the weekend[s] designated by the District for its exclusive use of the full property, including the Premises. The District and Lessee agree that the exercise of this option will not exceed the following limitations, unless mutually agreed to by the parties:

(1) A maximum of two additional weekends may be designated by the District in the six-month period commencing January 1 through and including June 30 of each calendar year; provided, however, no more than one weekend per month may be designated in the months of May and June.

(2) A maximum of two additional weekends may be designated by the District in the six-month period commencing July 1 through and including December 31 of each calendar year; provided, however, no more than one weekend may be designated in the month of December."

### 3. Rent.

Section F(1). "Percentage Rent" of the Lease is amended to read as follows:

"Effective April 1, 2009, the Percentage Rent payable under this Lease shall be 25% on the first \$12 million in Gross Revenues per applicable Lease Year and 35% on Gross Revenues exceeding \$12 million in a Lease Year. "Gross Revenues" is defined as any and all revenue generated by the outdoor marketplace operation to include but not limited to all admission fees, space rental charges, food and beverage sales, miscellaneous income and sales, sponsorship and/or advertising fees collected by the Lessee."

Section F(2). "Minimum Guaranteed Rent" of the Lease is deleted.

Section F(2.5). "Minimum Performance" is added to the Lease:

"Minimum Performance If rent revenues to the District in any Lease Year are less than \$2,000,000, the District and Lessee will each have the option to terminate the Lease by giving the other party not less than nine (9) months advance written notice. During the nine (9) month notice period, Lessee will pay rent at the greater of (a) the new percentage rent established by this Second Amendment; or, (b) at the rate of \$2,000,000.00 per year, or \$166,666.67 per month."

4. **Default and Termination of Agreement.** Section S(6). "Termination Upon Notice" is amended to read as follows:

"Notwithstanding any other provisions of the Lease, or any amendments to the Lease, including this Second Amendment, District reserves the right to terminate this Lease Agreement for any reason whatsoever upon 18 months written notice."

5. **General Conditions.** Section U(3). "Advertising, On-site Signage & Sponsorship" is amended to read in full as follows:

"Advertising, On-site Signage & Sponsorship. All advertising shall be subject to the prior approval of District Staff, which approval will not be unreasonably withheld. Lessee shall not advertise in any manner or form on or about the Premises except by means of such signage or forms of mass media advertising approved by the District. Such approval must be in writing prior to display or mass media circulation. Advertising signage as well as operational signs are to be temporary in nature, placed only in the defined outdoor marketplace premises and must be removed and stored at the end of the outdoor marketplace operating weekend. The District and Lessee will collaborate and engage in joint marketing to develop property-wide sponsorship agreements. Both parties will have the right of approval over sponsorship agreements proposed by either party, when such agreements share common elements and involve or affect both District and Lessee. Such approval will not be unreasonably withheld."

Section U(3.5). "Carnival Lot" is added to the Lease as follows:

"Carnival Lot. The District's Carnival Lot is designated as an area that can be used by Lessee, if available and subject to approval by the District, which approval may be granted or withheld by the District in its sole and exclusive discretion, for special programs sponsored by Lessee to attract more people to the Orange County Market Place. The parties will work in good faith to coordinate the calendar of these special events. Lessee will make its requests for such events at least 120 days in advance of the events, and the District will respond to the requests at least 90 days in advance of the events in order to allow adequate time for marketing the events."

6. **Republication.** Except as expressly amended above, the August 1, 2005 Outdoor Marketplace Lease, as amended on February 1, 2009, remains in full force and effect.

32<sup>nd</sup> District Agricultural Association

Effective April 1, 2009

By:

  
Steve Beazley, President and CEO

Tel Phil Enterprises, Inc.

Effective April 1, 2009

By:

  
Jeffrey E. Teller, President